

STATE OF MICHIGAN  
COURT OF APPEALS

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In re Contempt of CHRISTINE KOWAL.

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

v

ERNEST BRADLEY,

Defendant,

and

CHRISTINE KOWAL,

Respondent-Appellant.

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UNPUBLISHED

October 26, 2001

No. 223306

Wayne Circuit Court

Criminal Division

LC No. 00-161064

Before: Zahra, P.J., and Smolenski and Talbot, JJ.

PER CURIAM.

Appellant Christine Kowal appeals as of right from an order holding her in contempt. Appellant, an assistant prosecuting attorney in the underlying criminal action, moved to nolle prosequi the case because DNA testing had not been completed. The trial court held her in contempt when she refused to proceed to trial. We reverse.

The issuance of a contempt order is reviewed for an abuse of discretion. *In re Contempt of Steingold*, 244 Mich App 153, 157; 624 NW2d 504 (2000); *Deal v Deal*, 197 Mich App 739, 743; 496 NW2d 403 (1993).

A prosecutor must have leave of the court to nolle prosequi a case. MCL 767.29; *People v Glass (After Remand)*, 464 Mich 266, 278; 627 NW2d 261 (2001). In determining whether the prosecutor is acting properly in deciding to nolle prosequi, discontinue, or abandon a prosecution, however, a trial judge may not exercise supervisory power over the prosecutor. *Genesee Prosecutor v Genesee Circuit Judge*, 391 Mich 115, 121; 215 NW2d 145 (1974). The trial judge may not properly substitute her judgment for that of the prosecuting attorney as if the judge were reviewing the matter de novo. *Id.* The trial judge reviews the record to determine whether the prosecutor's decision is in accord with the law, facts and reason of the matter and

may only reverse or revise the prosecutor's decision if it appears on the record to be an abuse of prosecutorial power. *Id.*

Here, nothing in the record suggests that the trial court believed that the prosecutor was abusing her power or acting contrary to law. This case appears to involve a difference of opinion between the prosecutor and the trial judge regarding whether the case should proceed against defendant without the possibly exculpatory DNA evidence. In the absence of any showing that the prosecutor's request to nolle prosequi was an abuse of discretion, the trial court's actions here amounted to an exercise of supervisory power. *Id.* Accordingly, the trial court abused its discretion in issuing the contempt order. *Contempt of Steingold, supra.*

Reversed.

/s/ Brian K. Zahra

/s/ Michael R. Smolenski

/s/ Michael J. Talbot